THE PEONAGE CASES.

The subject of Peonage has recently assumed a prominent place in legal discussion. It is well known that the word "peon" signified originally a day laborer; and then, in Spanish America, it came to mean a laborer in debt to his employer and held in a kind of qualified servitude until he should work out the debt. Peonage is defined by Larousse in his Universal French Dictionary, (we translate) as "The status of natives of Mexico whom their employers hold and compel to work on their lands in payment of debts incurred by such laborers." It is well known that this system obtained in New Mexico, having grown up there prior to our acquisition of that Territory. Recent events in our Gulf States have raised interesting questions in regard to the Thirteenth Article of Amendment to the Constitution of the United States and the Act of Congress of 1867 concerning peonage.

The Thirteenth Amendment, ratified in December, 1865, declares that neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction; and that Congress shall have power to enforce this article by appropriate legislation. In the Slaughterhouse cases[1], a determined effort was made by the counsel of the Butchers Benevolent Association of New Orleans to induce the Court to hold that the monopoly and territorial restrictions set up by the Louisiana statute established a kind of involuntary servitude; and many learned references were made to mediæval abuses of this sort in France, Scotland and England. The Court, however, declined to accept this view, and decided that the involuntary servitude mentioned in the amendment was personal in its character, and might apply, for example, to illegal apprenticeship and the various forms of serfdom. Reference was made to the action of Chief Justice Chase in a Maryland case, in 1867, where an apprentice was liberated under the Thirteenth

[1](1873) 16 Wall. 36.

Amendment and the Civil Rights Act of 1866.[1] In dissenting on another point, Mr. Justice Field pointed out that the words "involuntary servitude" included something more than slavery in the strict sense of the word, and would embrace, "serfage, vassalage, villanage, peonage and all other forms of compulsory service for the mere benefit or pleasure of others."[2]

In the Civil Rights Cases[3] the Supreme Court considered the Thirteenth Amendment again, and in contrast with the Fourteenth, and pointed out that under the Thirteenth Amendment, legislation, so far as necessary or proper to eradicate all forms and incidents of slavery and involuntary servitude, may be direct and primary, operating upon the acts of individuals, whether sanctioned by State legislation or not.

In the meantime, the Congress had passed the act of March 2nd, 1867, Chapter 187, applying the Thirteenth Amendment to peonage and peons, in the following form:

"That the holding of any person to service or labor under the system known as peonage is hereby declared to be unlawful, and the same is hereby abolished and forever prohibited in the Territory of New Mexico, or in any other Territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of the Territory of New Mexico, or of any other Territory or State of the United States, which have heretofore established, maintained or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, be, and the same are hereby, declared null and void; and any person or persons who shall hold, arrest or return, or cause to be held, arrested, or returned, or in any manner aid in the arrest or return of any person or persons to a condition of peonage, shall, upon conviction, be punished by fine not less than one thousand nor more than five thousand dollars, or by imprisonment not less than one nor more than five years, or both, in the discretion of the court.

"SEC. 2. That it shall be the duty of all persons in the military or civil service in the Territory of New Mexico to aid in the enforcement of the foregoing section of this act; and any person or persons who shall obstruct or attempt to obstruct, or in any way interfere with, or prevent the enforcement of this act, shall be liable to the pains and penalties

[1] Matter of Turner (1867) 1 Abbott's U.S. Rep. 84. For some recent notice of Apprenticeship in the West Indies, see Morley's Life of Gladstone, Vol. I, p. 221.

[2] (1873) 16 Wall. 90. [3] (1883) 109 U. S. 3, 23.

hereby provided; and any officer or other person in the military service of the United States who shall so offend, directly or indirectly, shall, on conviction before a court-martial, be dishonorably dismissed the service of the United States, and shall thereafter be ineligible to reappointment to any office of trust, honor, or profit under the government."

The main provisions of the above statute have passed into the Revised Statutes of the United States in Sections 1990, 1991, 5526 and 5527.

So far as the present writer is informed, this legislation was not the subject of criminal procedure until the year 1901, when a grand jury of the United States, in the Circuit Court for the Northern District of Florida, found indictments in three cases,—United States *v.* Lewis, United States *v.* the same, and United States *v.* Clyatt; charging the defendants, respectively, in the first case with a conspiracy to return one George Walker to a condition of peonage, and so returning him by way of overt act; in the second, with returning the same person to a like condition; and in the third case, accusing the defendant, in two counts, with returning two persons named Gordon and Ridley to such condition of peonage, and with causing them to be so returned. The defendant Lewis, in the cases of United States *v.* Lewis, et als., after an unsuccessful motion to quash, sought to cut off the prosecution by applying for a writ of habeas corpus before the Honorable D. D. Shelby, United States Circuit Judge. The novel questions presented were duly argued and decided in April, 1902, the writ being refused.[1] Judge Shelby found it to be elementary that under such circumstances, a writ of habeas corpus will not issue unless the court under whose warrant the petitioner is held is found to be without jurisdiction;[2] and, that the writ cannot be used to take the place of a writ of error. Proceeding to inquire if the court had jurisdiction, the learned Judge thought that it had. In reply to the contention of the prisoner that the purpose of the statute was only to abolish the "system of peonage" in the Territory of New Mexico, it was held that while the existence of that system there was the moving cause of the passage of the act of 1867, as shown by the de-

[1] In re Lewis (1902) 114 Fed. 963.

[2] In re Chapman (1895) 156 U. S. 211–215.

bates,[1] yet the statute goes further and makes criminal certain acts which would tend to sustain or re-establish such a system. As to the thirteenth amendment, it was held that it authorized Congress to make laws against involuntary servitude, whether peonage, vassalage, serfdom or villanage; that the statute in question makes it an offense to hold or return one to a condition of peonage; that the word "peonage" as used in the statute includes cases of involuntary servitude to work out a debt; that a peon as defined in the Century Dictionary is a "species of serf compelled to work for his creditor until his debts are paid;" that the statute contains words pointing to this definition, for it refers to the service or labor of persons, "as peons in liquidation of any debt or obligation;" and that in any event, it was not necessary in such a proceeding, to decide whether or not a "system" of peonage like that once prevailing in New Mexico must have existed in the premises stated in the indictment before the statute would apply. "The statute," said Judge Shelby, "by its terms embraces the case of the return of a single person to a condition of peonage. But whether the person held in or returned to such condition is within the statute unless he and others are also held under a system, pretended law or custom, is a question relating rather to the sufficiency of the indictment or evidence to be offered on the trial,—questions not involved in this application." On the whole it was held that the Circuit Court had jurisdiction of the questions presented by the indictments, and that the writs of habeas corpus must be denied.

The case of the United States *v.* Clyatt was tried on the merits at Pensacola, in 1902, and the defendant was found guilty and sentenced to imprisonment for a term of four years in the penitentiary. He then removed the case, by writ of error, to the United States Circuit Court of Appeals, at New Orleans, where it is now pending, and will soon be argued. The decision will be looked forward to with interest, as it will probably be the first on the subject by an appellate court. The transcript of record contains all the testimony, although it is claimed by counsel representing the prosecution that the appellate court will not undertake to reverse, as against the weight of evidence, where there

[1] Cong. Globe, 1866–7, Part 3, p. 157.

was any testimony proper to go to the jury in support of the verdict.[1]

If, however, the testimony is to be considered, the prosecution claims that there is evidence tending to show some kind of custom or practice in South Georgia and Northern Florida, in the turpentine business, by which employers hold laborers who are in debt until the debts are worked out, and under which laborers are, if need be, pursued and brought back when they have left without paying the debts due their employers.

It is also claimed by the prosecution that the defendant was in the turpentine business in South Georgia, and came down thence into Florida bringing with him warrants for the arrest of five laborers who had left his place; that he had procured the help of a person who was a deputy sheriff in Florida and went to the house of one Dean to look for the five men; that one of the men was not found at all; that two of them were redeemed by Dean, who paid what they owed the defendant's firm; and that the other two, Gordon and Ridley, were carried off by the defendant to his place in Georgia in order that they might work out such debts as they owed the defendant's firm. The warrants mentioned above were either for gaming or larceny, but for precisely what did not appear. The prosecution contended that the fact that two of the five laborers were left with Dean upon his paying their debts, would indicate that the warrants were not serious, and that it was not seriously intended they should be executed.

The defense offered no testimony in the case, but relied mainly upon the points that the indictment was defective; that the act of 1867 is unconstitutional; that the offenses, if any, charged in the case were offenses cognizable only in the State court; that no "system" of peonage either in Florida or Georgia was alleged or proved, whether by act, law, regulation or usage; and that the statute of 1867 was made and intended to be applied to a system in existence in the Territory of New Mexico, and not extended to any State wherein the system then existing in New Mexico did not obtain. Other points were made by the defendant in connection with special testimony in the case, to which it

[1] Humes *v.* United States (1898) 170 U. S. 210.

is not necessary to make allusion. It is expected that the case will be argued soon in the appellate court.

During the last year a large number of indictments have been found by United States grand juries in the District Court for the Middle District of Alabama, at Montgomery, for holding persons in a condition of peonage or returning them to such a condition. One of these juries appears to have requested special instructions on the subject and concerning the meaning of the Act of 1867, above quoted; and, in June last, Judge Thomas G. Jones of that District delivered an elaborate charge which has been reported.[1] After alluding to the origin of peonage in Spain, and its transfer to Mexico, and thence to New Mexico, the Judge stated that peonage is not slavery and a peon is not a slave, but a laborer bound to his master for an indebtedness founded on advancements made in consideration of service. He then showed how this system had been abused in New Mexico and why the Act of March 2nd, 1867, had been adopted. In construing the Act, he laid down the rule that such a statute, imposing as it does penalties for the invasion of the rights of the citizen in order to protect him in his liberty and happiness, is not the subject of disfavor in the law, and should not be construed with the same strictness, or on the same footing, as laws which regulate or restrain the exercise of a natural right or forbid the doing of things not intrinsically wrong. He declared that under the statute in question, which makes it an offense to hold a person in a condition of peonage, or return a person to such condition, it is immaterial, as regards such offense whether or not the condition of peonage exists by virtue of a local law or custom creating such a condition, or whether it exists in violation or without the sanction of law. The "condition of peonage," the Judge held, is a condition of enforced servitude by which the servitor is restrained of his liberty and compelled to labor in liquidation of some debt or obligation, real or pretended, against his will; and any agreement giving another the right to exact such servitude is invalid in law, is treated as made involuntarily, and affords the creditor or master no protection; and in considering the effect of influence,

[1] Peonage Cases (1903) 123 Fed. 671.

threats or force in rendering service involuntary and creating the "condition" in question, we may take into consideration in each case the relative inferiority of the person so contracting to perform the service when compared with the person exercising the force. The Judge further declared, in view of the variety of cases before him, that if a person hires another under, or induces him to sign, a contract, by which the latter agrees during the term to be imprisoned or kept under guard, and, under cover of such agreement, afterwards holds the party to the performance thereof, by threats, punishment or undue influence, subduing his free will when he desires to abandon such service, he is guilty of holding such person in a condition of peonage. He also charged that a person who falsely pretends to another that he is accused of crime and offers to prevent conviction if he will pay a sum of money to satisfy the prosecutor, and thus induces the party to sign a contract to work out the amount, and to submit to restraint and deprivation of liberty while thus working out a debt, is guilty of holding such laborer in a condition of peonage, or causing him to be so held, whenever such laborer desires to leave his employment, but is compelled by threats or punishment to remain and work under such contract. Other charges were also given, of an interesting character, concerning local conditions in Alabama, and as to false accusations of crime made for the purposes of placing laborers in a condition of involuntary servitude; and as to the unconstitutionality of certain labor laws in that State. As a result a large number of indictments were found, to some of which the defendants have pleaded guilty and have paid large fines.

In the Southern District of Georgia, twelve indictments have been recently found for violation of the foregoing act of 1867. In some of them the defendants have pleaded guilty and have been fined. Judge Emory Speer charged the Grand Jury on the subject, but his charge has not yet been furnished to the Federal Reporter. The following extract, as printed in the Macon Telegraph of June 19th, 1903, will show the opinion of the learned Judge on the leading questions involved:

" * * * In the neighboring republic of Mexico there has been in force a system of what is termed 'peonage,' by which the laboring classes in large measure spend their entire lives in the ostensible effort to pay off indebtedness due to their employers. This is but involuntary servitude. A peon is one who is bound to serve his creditor until the debt is paid. This is, however, distinctly forbidden not only by the principles of the State and United States constitutions already quoted, but by act of congress made in pursuance of the latter. This provides that 'Every person who holds, arrests, returns, or causes to be held, arrested or returned, or in any manner aids in the arrest or return of any person to a condition of peonage, shall be punished by a fine of not less than $1,000 nor more than $5,000 or by imprisonment not less than five years, or both.'

"In view of recent facts officially called to my attention I have the painful duty of giving you that provision of the revised statutes in special charge, and advising you it is your duty to inquire and ascertain if it has been violated.

"I have been advised that in one case in a neighboring county a laboring man entered into a contract to work as farm laborer for seven months. It is stated that a dispute arising between the employer and the employee the latter left and went to work for another; that the first employer and other persons armed themselves, went to the field where the employee was peaceably at work, seized him, tied him, carried him back to the farm, whipped him, and put him back to work and that he is now virtually held in a condition of slavery or involuntary servitude. If these facts are true, the indictment of the guilty parties is demanded at your hands. Such an occurrence is distinctly violative of the law of our country which I have given you in charge. Nothing could be more demoralizing in its effect on the peace and good order of the community, and no greater reproach to the humanity of our people."

To sum up briefly: it would seem that in the opinion of the three United States judges who have considered the act of 1867, the statute is constitutional and acts directly on the individual who holds another in a condition of peonage, or returns another to such condition, and that no regular "system" of peonage, whether statutory or customary, must be established and exist as a condition precedent to the possibility of such an offense. However, in due time we shall hear from the appellate courts; and it is probable that the Supreme Court of the United States may be asked by certificate or certiorari to pass on the interesting questions involved in the various cases.

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